

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.50 OF 2023
IN
WRIT PETITION NO.4946 OF 2014**

1. Riyaz Ahmad Sadroddin,
Age : 38 years, Occu: Service
R/o Kasaba Pimpri, Tal. Jamner,
District Jalgaon.
2. Waquar Mustafa Shaikh Ahamad,
Age: 38 years, Occu: Service,
R/o Dhalgaon, Tal. Jamner,
District Jalgaon.
3. Sayyad Ayaz Sayyad Rafique,
Age : 38 years, Occu: Service,
R/o. Kajagaon, Tal. Bhadgaon,
District Jalgaon.
4. Masood Husain Shaikh Anwar,
Age : 38 years, Occu: Service,
R/o. Shindhar, Tal. Pachora,
District Jalgaon.
5. Khan Naved Khan Nazeer,
Age : 37 years, Occu: Service,
R/o Kurha Kakoda,
Tal. Muktainagar, Dist. Jalgaon.
6. Shaikh Mohammad Wahed Mohammad Iqbal,
Age : 38 years, Occu: Service
R/o Fattepur, Tal. Jamner,
District Jalgaon.

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Secretary,
School Education and Sport
Department, Mantralaya,
Mumbai – 32.
2. The Chief Executive Officer,
Zilla Parishad, Jalgaon.

3. The Education Officer (Primary),
Zilla Parishad, Jalgaon.
4. The Superintendent, Pay Unit and G.PF.,
Zilla Parishad, Jalgaon.

... **RESPONDENTS**

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Advocate for Applicants : Mr. S.B. Solanke
APP for the respondent No.1 – State : Mrs. M.A. Deshpande
Advocate for the respondent Nos.2 to 4 : Mr. Maheshkumar S. Sonawane

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**CORAM : MANGESH S. PATIL &
S. G. MEHARE, JJ.**

**Reserved on : 02 MAY 2023
Pronounced on : 09 JUNE 2023**

JUDGMENT :

Rule. The Rule is made returnable forthwith.

2. Heard the learned advocate Mr. S.B. Solanke for the petitioners, Mrs. M.A. Deshpande learned AGP for the respondent No.1 and Mr. Maheshkumar S. Sonawane learned advocate for the respondent Nos.2 to 4.

3. The petitioners had applied for the posts of Shikshan Sevak in the respondent Nos.2 to 4 Zilla Parishad pursuant to an advertisement dated 30.07.2004. On the date of such notification the services of such Shikshan Sevak were, admittedly governed by the Maharashtra Civil Service (Pension) Rules, 1982, the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and the General Provident Fund Scheme. Admittedly, though the selection process had proceeded further pursuant to the advertisement, the actual

appointment letters were issued to the petitioners after a new pension scheme was introduced with effect from 01.11.2005. By virtue of amendment in Rule 2(2) of the M.S.C. (Pension) Rules it has been laid down that the provisions of those rules will not be applicable to the Government Servants who recruited on or after 01.10.2005.

4. The petitioners claimed a declaration that though their appointment orders were issued after 01.11.2005 they would still be governed by the old pension scheme regulated by the aforementioned rules and not by the new pension scheme called 'Defined Contribution Pension Scheme' (DCPS).

5. It appears that some issues regarding applicability of old pension scheme or DCPS to the teachers appointed in private schools were referred to the full bench of this Court in the matter of **Deshmukh Dilipkumar Bhagwan and Ors. Vs. The State of Maharashtra and Ors.;** (WP No.9387/2013 and connected matters, MANU/MH/ 0789/2019). By referring to the answers of the full bench the petition was dismissed by the order under review.

6. There is no dispute about the fact that the petitioners have been appointed by the respondent Nos.2 to 4 Zilla Parishad. Therefore the points of reference to the full bench which were essentially in respect of the teachers appointed in private schools receiving 100% grant-in-aid or partial grant-in-aid is not germane to the petitioners'

grievance. When the petitioners are appointed in the schools run by the Zilla Parishad the terms of reference and the answers given by the full bench *prima facie* would not apply to their case. This Court in the order under review had not referred to any other aspect and dismissed the writ petition simply by making a reference to the replies of the full bench to the point of reference which has no bearing qua the petitioners' case.

7. Ex facie, therefore, there is a formal defect or error apparent on the face of the record as contemplated under Section 124 read with Order XLVII Rule 1 of the Code of Civil Procedure to undertake a review.

8. We have heard both the sides on merits of the writ petition.

9. There is no dispute about the facts or the legal provisions. The petitioners had applied for the recruitment process pursuant to an advertisement published on 30.07.2004. The Government Servants as also the Zilla Parishad employees were then governed by the provisions of the M.C.S. (Pension) Rules, 1982, the M.C.S. (Commutation of Pension) Rules, 1984 and General Provident Fund Scheme read with the Maharashtra Zilla Parishads, District Services Rules, 1968, the Maharashtra Zilla Parishads (Payment of Contributions Towards Pension, Gratuity and other Benefits) Rules, 1971 and the Maharashtra Zilla Parishads General Provident Funds Rules, 1966, respectively.

Admittedly, the recruitment process had advanced to the stage. A select list was also published. Even appointment letters were also issued to many candidates prior to 01.11.2005. But because of some litigation perhaps there was delay in issuing appointment letters to the petitioners which were issued between 29.12.2005 and 02.01.2006. The question is as to if by virtue of the provisions of Rule 2(2) of the M.C.S. (Pension) Rules the appointment of the petitioners' being after 01.11.2005, whether the old pension scheme would apply to them or would they be governed by the DCPS.

10. The issue is no more *res integra*. In an elaborate judgment in the matter of **Khilari Rajendra Eknath and Ors. Vs. The State of Maharashtra and Ors. (Writ Petition No.2270/2021 (Original Side of the Principal Bench))** by the judgment and order dated 28.04.2023, this Court after taking into consideration the fact that the DCPS is based on the policies of the Central Government and pointing out the similarities in the rules and issuance of office memorandum by the Central Government dated 03.03.2023 and precisely making out a distinction between the word "recruitment" instead of word "appointment" used in Rule 2(2) and following the decision of the Supreme Court in the matter of **Shivaji Nagnath Lokare and Ors. Vs. State of Maharashtra and Ors.; (2017) 5 Mh.L.J.854** and **Prafulla Kumar Swain Etc. Vs. Prakash Chandra Misra and Ors.; 1993 SCC Supl. (3) 181**, this Court has

expressly held that the petitioners therein whose appointments were made after 01.01.2005 when the recruitment process had begun prior thereto were governed by the old pension scheme and not by the DCPS introduced vide Government Resolution dated 31.10.2005.

11. We are in respectful agreement with the view taken in the matter of **Khilari Rajendra Eknath** (supra). When admittedly the selection process in respect of the petitioners had even reached a stage of publication of select list and only the appointment orders had remained to be issued and were issued to them between 29.12.2005 and 02.01.2006 that is after 01.11.2005, they would still be governed by the old pension scheme and not by the DCPS.

12. The Review Application is allowed. The order dated 09.08.2019 in WP No.4946/2014 (common judgment in WP/2894/2014) is recalled. The writ petition is allowed in terms of the directions in paragraph Nos.30 and 31 in the matter of **Khilari Rajendra Eknath** (supra) which read thus :

“30. Resultantly, the Writ Petition succeeds. It is declared that Petitioners shall be governed by the provisions of the Old Pension Scheme in vogue prior to 1.11.2005, as well as General Provident Fund Scheme. Petitioners shall not be governed by the provisions of the Defined Contributory Pension Scheme introduced vide G.R. dated 31.10.2005. The Petitioners’ contribution to DCPS be credited to their GPF Accounts. The modalities as suggested in para-8 of the Office Memorandum dated 03.03.2023 issued by the Government of India be adopted while switching over Petitioners from DCPS to Old Pension Scheme.

31. We hope and trust that the State of Maharashtra would issue Office Memorandum similar to Office Memorandum dated 03.03.2023 issued by the Central Government clarifying that in all cases where State Government employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment prior to the date of notification for Defined Contributory Pension Scheme i.e. 31.10.2005 and is covered under the Defined Contributory Pension Scheme on joining service on after 01.11.2005, may be given one time option to be covered under the The M.C.S. (Pension) Rules, 1982. Such an office memorandum would avoid further litigation.”

13. The Rule is made absolute in above terms.

[S.G. MEHARE]
JUDGE

[MANGESH S. PATIL]
JUDGE